

IN THE UNITED STATES DISTRICT COURT

FILED
BILLINGS DIV.

DISTRICT OF MONTANA

2008 SEP 18 PM 1 34

BILLINGS DIVISION

PATRICK E. DUFFY, CLERK

BY

WILLIAM CARSON CORTRIGHT,) Cause No. CV 06-117-BLG-RFC-CSO
Plaintiff,) DEPUTY CLERK

vs.)

JASON MAHONEY, Yellowstone County) ORDER ADOPTING FINDINGS
Deputy,) AND RECOMMENDATIONS
Defendant.) U.S. MAGISTRATE JUDGE

On August 28, 2008, United States Magistrate Judge Carolyn S. Ostby entered her Findings and Recommendation with regard to Defendant Mahoney's Motion for Summary Judgment (*Doc. 30*). *Doc. 34*. Magistrate Judge Ostby recommends Defendant's motion be granted and that judgment be entered in his favor.

Upon service of a magistrate judge's findings and recommendation, a party has 10 days to file written objections. 28 U.S.C. § 636(b)(1). In this matter, no party filed objections to the August 28, 2008 Findings and Recommendation. Failure to object to a magistrate judge's findings and recommendation waives all objections to the findings of fact. *Turner v. Duncan*, 158 F.3d 449, 455 (9th Cir. 1999). However, failure to object does not relieve this Court of its burden to review de novo the magistrate judge's conclusions of law. *Barilla v. Ervin*, 886 F.2d 1514, 1518 (9th Cir. 1989).

Here, Magistrate Judge Ostby correctly concluded that a party opposing summary

judgment cannot rest on the allegations in the pleadings, but must set forth specific facts demonstrating there is a genuine issue to be resolved by the trier of fact. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). Because Plaintiff failed to respond to the motion for summary judgment, the Court must credit Defendants undisputed testimony that he used no force in arresting and transporting Plaintiff. Since the undisputed facts establish no unreasonable use of force, Plaintiffs claim that he was deprived of his constitutional rights must fail. *See Graham v. Conner*, 490 U.S. 386, 388 (1989).

Accordingly, this Court finds Magistrate Judge Ostby's Findings and Recommendation are well grounded in law and fact and adopts them in their entirety.

IT IS HEREBY ORDERED Defendant's Motion for Summary Judgment (*Doc. 30*) is **GRANTED**.

The Clerk of Court shall notify the parties of the entry of this Order and enter judgment for Defendant Mahoney. 

DATED the 16 day of September, 2008.



RICHARD F. CEBULL
UNITED STATES DISTRICT JUDGE